



March 3, 2000

Ms. Valerie T. Beugen
Staff Attorney
The Texas A&M University System
John B. Connally Building
301 Tarrow, 6th Floor
College Station, Texas 77840-7896

OR2000-0869

Dear Ms. Beugen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 132945.

The Chief of Police (the “chief”) at Texas A&M International University (the “university”) received a request for “a complete copy of any file(s) located at [the university] and its Police Department, or any other department or division within the [university] system” relating to the requestor. You represent to this office that the requestor seeks information relating to an investigation of the requestor.¹ You have provided for our review “all the documents” responsive to the request. You indicate there exists other responsive information on cassette tape, and that this information is summarized in the submitted documents.² See Gov’t Code § 552.002(b)(4) (the media on which public information is recorded includes tape). You assert that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you assert and reviewed the submitted documents.

¹We note that the request as written is broad in scope and is not limited to information relating to an investigation of the requestor. We therefore assume you have released all information responsive to the request except that information you seek to withhold from the requestor. See also Gov’t Code § 552.222(b) (providing that where a large amount of information has been requested, a governmental body may discuss with the requestor how the scope of a request might be narrowed); *Id.* and Open Records Decision No. 304 (a governmental body may ask a requestor to clarify a request that is unclear, but is prohibited from inquiring into the purpose for which the information will be used).

²We therefore assume the relevant documents comprise representative samples of the information you seek to withhold. See Gov’t Code § 552.301(e)(1)(D) (if a voluminous amount of information is requested, a governmental body in seeking a ruling from this office may submit representative samples of the responsive information). Thus, in reaching our conclusion here, we assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988); 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

We note at the outset that the documents submitted for our review include documents that appear to have been created subsequent to the university's receipt of the public information request at issue. It is implicit in several provisions of the Public Information Act (the "Act") that the Act applies only to information already in existence. *See* Gov't Code §§ 552.002, .021, .227, .351. Thus, the Act does not require a governmental body to prepare new information in response to a request. Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975). Nor does the Act require a governmental body to supply information on a periodic basis as such information is prepared in the future. Attorney General Opinion JM-48 at 2 (1983); Open Records Decision Nos. 476 at 1 (1987), 465 at 1 (1987). The documents submitted for our review that did not exist at the time of the request at issue are therefore not responsive to the present request. Thus, you are not required to release these documents to the requestor.³

The submitted information also includes documents that appear to have been filed with a court. Documents filed with a court are generally considered public and must be released. Gov't Code § 552.022(17) (information that is also contained in a public court record is not excepted from disclosure unless made confidential by other law); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992).

The requestor has also submitted comments to this office. *See* Gov't Code § 552.304 (a person may submit written comments to this office stating why the information at issue should or should not be released). The requestor indicates some of the responsive information you seek to withhold may have already been made available to the requestor. As to any information you seek to withhold that has already been made available to the requestor or to another member of the public, we determine such information is not excepted from required disclosure. *See* Open Records Decision No. 192 (construing the statutory predecessor to section 552.007 of the Government Code to prohibit a governmental body from engaging in selective disclosure).

Section 552.108 of the Government Code provides in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an

³You advise this office that the university received the request on January 3, 2000. The documents at issue contain dates subsequent to that date or are indicated to have been created subsequent to the request. We have marked these documents with a blue flag.

investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

* * *

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You represent to this office that the information at issue relates "to an ongoing criminal investigation" by the university police department. We therefore find that you have shown that the release of the requested information would interfere with the detection, investigation or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 216 (1978). The documents include an incident report. We note that information normally found on the front page of an offense or incident report is generally considered public. *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Thus, you must release the type of information that is considered to be front page offense report information, even if this information is not actually located on the front page of the incident report. Gov't Code § 552.108(c); *see* Open Records Decision No. 127 (1976) (summarizing the types of information deemed public by *Houston Chronicle*). Thus, except as otherwise noted herein, we conclude that the information may be withheld under section 552.108(a)(1).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

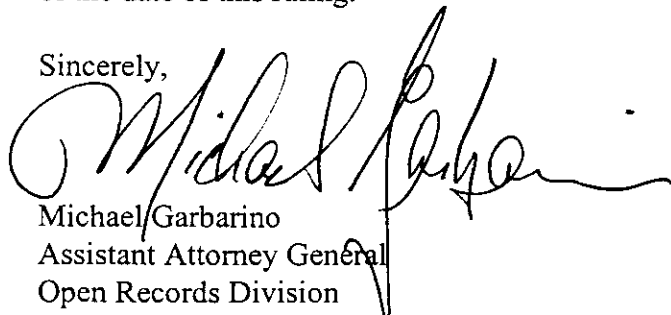
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/ch

Ref: ID# 132945

Encl. Submitted documents

cc: Mr. Juan Alejandro
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(w/o enclosures)